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 United States of America

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

United States of America,
 Plaintiff,

2:12-cr-400-JAD-GWF

v.

Plea Agreement

Thomas A. Cecrle, Jr.,
 Defendant.

The United States, by and through Daniel G. Bogden, United States Attorney, and Steven W. Myhre, First Assistant United States Attorney, and Daniel R. Schiess, Assistant United States Attorney, the defendant Thomas A. Cecrle, Jr., and his attorney, William C. Carrico, submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A) and (B).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and Thomas A. Cecrle, Jr. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other

1 prosecuting, administrative, or regulatory authority, the United States Probation
2 Office, or the Court.

3 The Plea Agreement sets forth the parties' agreement regarding criminal
4 charges referenced in the Plea Agreement and applicable sentences, fines,
5 restitution and forfeiture. It does not control or prohibit the United States or any
6 agency or third party from seeking any other civil or administrative remedies
7 directly or indirectly against the defendant.

8 II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS

9 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead
10 guilty to Count One of the Indictment filed October 24, 2012, charging conspiracy
11 to commit wire fraud in violation of 18 U.S.C. § 1349.

12 B. Waiver of Trial Rights. The defendant acknowledges that he has been
13 advised and understands that by entering a plea of guilty he is waiving – that is,
14 giving up – certain rights guaranteed to all defendants by the law and the
15 Constitution of the United States. Specifically, the defendant is giving up:

16 1. The right to proceed to trial by jury on all charges, or to a trial
17 by a judge if the defendant and the United States both agree;

18 2. The right to confront the witnesses against the defendant at
19 such a trial, and to cross examine them;

20 3. The right to remain silent at such a trial, with assurance that
21 his silence could not be used against him in any way;

22 4. The right to testify in his own defense at such a trial if he so
23 chooses;

24 5. The right to compel witnesses to appear at such a trial and
25 testify in the defendant's behalf; and

26 6. The right to have the assistance of an attorney at all stages of
27 such proceedings.

1 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw
2 his guilty plea after he has entered it in court.

3 D. Additional Charges. The United States agrees not to bring any
4 additional charges against the defendant arising out of the investigation in the
5 District of Nevada which culminated in this Plea Agreement and based on conduct
6 known to the United States, except that the United States reserves the right to
7 prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.

8 **III. ELEMENTS OF THE OFFENSE**

9 A. The essential elements of Count One, Conspiracy to Commit Wire
10 fraud, in violation of Title 18, United States Code, Section 1349, are as follows:

11 First: From in or about September 2002, to in or about October 2012,
12 there was an agreement between two or more persons to commit
13 the crime of wire fraud, in violation of Title 18, United States
14 Code, Section 1343; and

15 Second: During the dates set forth above, the defendant became a
16 member of the conspiracy knowing of at least one of its objects
17 and intending to help accomplish it.

18 See Ninth Circuit Manual of Model Jury Instruction, Criminal 8.20 (2010
19 ed.) (modified for 18 U.S.C. § 1349 by eliminating the element requiring proof of an
20 overt act).

21 B. The essential elements of Wire Fraud, in violation of Title 18, United
22 States Code, Section 1343, are as follows:

23 First: The defendant knowingly devised, intended to devise, or
24 participated in a scheme or plan to defraud, or a scheme or plan
25 for obtaining money or property by means of false or fraudulent
26 pretenses, representations, or promises;

1 Second: The statements made or facts omitted as part of the scheme were
2 material; that is, they had a natural tendency to influence, or
3 were capable of influencing, a person to part with money or
4 property;

5 Third, the defendant acted with the intent to defraud; that is, the intent
6 to deceive or cheat; and

7 Fourth, the defendant used or caused to be used interstate wire
8 communications to carry out an essential part of the scheme.

9 See Ninth Circuit Manual of Model Jury Instructions, Criminal 8.121 and
10 1.124 (2010 ed.).

11 IV. FACTS SUPPORTING GUILTY PLEA

12 A. The defendant will plead guilty because he is, in fact and under the
13 law, guilty of the crime charged.

14 B. The defendant acknowledges that if he elected to go to trial instead of
15 pleading guilty, the United States could prove his guilt beyond a reasonable doubt
16 and establish its right to the forfeiture money judgment. The defendant further
17 acknowledges that his admissions and declarations of fact set forth below satisfy
18 every element of the charged offense.

19 C. The defendant waives any potential future claim that the facts he
20 admitted in this Plea Agreement were insufficient to satisfy the elements of the
21 charged offense.

22 D. The defendant admits and declares under penalty of perjury that the
23 facts set forth below are true and correct:

24 1. From in or about September 2002, to in or about October 2012,
25 defendants Cecrle, Jones, Fenton, Wolfe, Hansen, Martin, and others conspired to
26 devise and execute a scheme or artifice to defraud and for obtaining money or
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1 for others; (4) the project was near completion and Cecrle had an immediate need
2 for a short-term cash loan to complete it; and (5) when the project was completed
3 and within a very short time, Cecrle would repay the loans together ^{with} ~~win~~ an
4 enormous return.

5 5. Cecrle caused co-conspirators to solicit money on his behalf,
6 repeating these same false representations over and over again to numerous
7 investors for several years, asking the victims to deposit odd sums of cash on short
8 notice into accounts owned and controlled by one of the co-conspirators. The
9 conspirators never provided the victims with receipts for the money they "invested"
10 nor provided them with any documentation describing the investment or the terms
11 under which the money was "invested." Throughout the duration of the conspiracy,
12 none of the victims ever received the return of their principal or any return on their
13 investment. Instead, Cecrle and his co-conspirators fed the victims with a steady
14 stream of false excuses designed to lull investors into complacency as to why they
15 did not receive their money as promised. For example, in 2009, Cecrle caused
16 defendant Wolfe to tell one victim that the water rights deal failed to pay out
17 because Cecrle had left his wallet at a restaurant and therefore could not prove
18 who he was in order to "close" the deal. Wolfe told the investor that the deal would
19 nevertheless close "on Saturday." Notwithstanding these representations, the
20 investor never received any money.

21 6. As a further part of the scheme and conspiracy, Cecrle also
22 caused co-conspirators to: (1) solicit and/or receive money from investors in odd
23 amounts and at non-scheduled odd times; (2) engage in commercially unusual and
24 unreasonable transactions in connection with the water rights investment; (3)
25 promise investors that the water rights investment would fund, or payout, shortly
26 after investors paid money into it, even though he knew they never did and never
27 would; and (4) knowing that in June 2009, federal law enforcement agents had
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1 executed a search warrant on co-defendant Fenton's residence, caused co-
2 conspirators to continue to represent to investors that the investment was
3 legitimate.

4 7. At all times relevant, co-conspirator Jones was a public official
5 in the State of Nevada, having been duly-elected to the position of Judge, Nevada
6 Eighth Judicial District Court, Family Division.

7 8. As a further part of the scheme and conspiracy, defendants
8 Cecrle, Jones, and his co-conspirators, knowingly used Jones's name, title, and
9 office in connection with the fake projects, in part as follows:

10 a. At various times throughout the conspiracy, the
11 conspirators knowingly used and associated Jones' name and title with Cecrle, and
12 thereby with the fake projects, as a means to vouch for Cecrle's credibility and to
13 lull the investors into a false sense of security that the projects were legitimate.

14 b. In March 2006, Cecrle had Jones use his office as a Judge
15 to knowingly assist defendant Cecrle in obtaining an "Own Recognizance" release
16 from custody following Cecrle's arrest on state charges for bad checks he wrote to
17 repay a victim of the scheme;

18 c. From March 2006 to June 2009, Cecrle relied on Jones to
19 falsely tell at least one victim who knew that Jones was a judge and was using that
20 fact to assess the credibility and legitimacy of Cecrle that Cecrle was involved in a
21 lucrative project, that he (Jones) would help Cecrle complete the project in any way
22 he could, and that Cecrle was difficult to reach because he was traveling in
23 connection with the project.

24 d. From at least March 2006 to November 2008, Jones met
25 with at least one victim on numerous and diverse occasions in chambers and
26 elsewhere within the Family Division courthouse to discuss the payment of money
27 to defendant Cecrle in connection with the water project when Cecrle and Jones
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1 knew the victim was relying on Jones' representations and his position as a judge
2 to assess the legitimacy of the project.

3 e. Between February and June 2007, while Cecrle was
4 incarcerated, Jones, wearing his judicial robe, receive an in-person cash payment
5 in the parking lot of the Family Division courthouse, when Jones and Cecrle knew
6 that the money Jones received was from a victim for the purpose investing in the
7 water project and that the person making the payment relied on Jones' position as
8 a judge to assess the credibility and legitimacy of the project.

9 f. From December 2006 to about March 2008, Cecrle and
10 Jones established and maintained a joint checking account which they used to
11 receive and disburse over \$260,000 in proceeds from the fraudulent investment
12 scheme, in over 1,000 transactions.

13 9. As a further part of the scheme and conspiracy to defraud, the
14 conspirators made, or caused to be made, interstate electronic communications,
15 including an email defendant sent on or about December 13, 2007, to victim C.D.,
16 containing a document entitled Settlement Agreement and Mutual Release,
17 relating to the fraudulent water rights investment.

18 10. As a result of the scheme and conspiracy, at least 22 victims
19 were defrauded of an amount in excess of \$2.6 million.

20 V. COLLATERAL USE OF FACTUAL ADMISSIONS

21 The facts set forth in Section IV of this Plea Agreement shall be admissible
22 against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any
23 purpose. If the defendant does not plead guilty or withdraws his guilty plea, the
24 facts set forth in Section IV of this Plea Agreement shall be admissible at any
25 proceeding, including a trial, for impeaching or rebutting any evidence, argument
26 or representation offered by or on the defendant's behalf. The defendant expressly
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waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use of the facts set forth in Section IV of this Plea Agreement.

VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Offense Level Calculations. The parties stipulate to the following calculation of the defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the Court, and agree that they will not seek to apply any other specific offense characteristics, enhancements or reductions:

Base Offense Level (USSG § 2B1.1(a)(1)):	7
Loss Amount: \$2.5M to \$7M (USSG §2B1.1(b)(1)(J)):	18
More than 10 but less than 50 victims (USSG §2B1.1(b)(2)(A))	2
Sophisticated Means (USSG §2B1.1(b)(10)(C))	2
Organizer and Leader of more than 5 Participants (USSG §3B1.1(a)):	4
Acceptance of Responsibility (USSG §3E1.1(a),(b))	(3)
Group Plea	(2)
Total	<u>28</u>

The defendant acknowledges that the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the

1 defendant's sentence notwithstanding any applicable Sentencing Guidelines
2 provisions.

3 The two-level reduction for "Group Plea" is contingent upon, and only
4 applicable in, the event that on or before the defendant is sentenced in this case,
5 each of the defendants named in the Indictment enters a plea of guilty to one or
6 more of the counts charged therein.

7 C. Reduction of Offense Level for Acceptance of Responsibility. Under
8 USSG §3E1.1(a), the United States will recommend that the defendant receive a
9 two-level downward adjustment for acceptance of responsibility unless he (a) fails
10 to truthfully admit facts establishing a factual basis for the guilty plea when he
11 enters the plea; (b) fails to truthfully admit facts establishing the amount of
12 restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts
13 establishing the forfeiture allegations when he enters his guilty plea; (d) provides
14 false or misleading information to the United States, the Court, Pretrial Services,
15 or the Probation Office; (e) denies involvement in the offense or provides conflicting
16 statements regarding his involvement or falsely denies or frivolously contests
17 conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g)
18 commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates
19 the conditions of pretrial release.

20 Under USSG §3E1.1(b), the United States will move for an additional one-
21 level downward adjustment for acceptance of responsibility before sentencing
22 because the defendant communicated his decision to plead guilty in a timely
23 manner that enabled the United States to avoid preparing for trial and to
24 efficiently allocate its resources.

25 These Sentencing Guidelines provisions, if applied, will result in a total
26 adjusted offense level of 28, as stated above.

1 D. Criminal History Category. The defendant acknowledges that the
2 Court may base his sentence in part on his criminal record or criminal history. The
3 Court will determine the defendant's Criminal History Category under the
4 Sentencing Guidelines.

5 E. Relevant Conduct. The Court may consider, and the government may
6 present, any and all relevant conduct, whether charged or uncharged, in
7 determining the applicable Sentencing Guidelines range and whether to depart
8 from that range.

9 F. Additional Sentencing Information. The stipulated Sentencing
10 Guidelines calculations are based on information now known to the parties. The
11 parties may provide additional information to the United States Probation Office
12 and the Court regarding the nature, scope, and extent of the defendant's criminal
13 conduct and any aggravating or mitigating facts or circumstances. Good faith
14 efforts to provide truthful information or to correct factual misstatements shall not
15 be grounds for the defendant to withdraw his guilty plea.

16 The defendant acknowledges that the United States Probation Office may
17 calculate the Sentencing Guidelines differently and may rely on additional
18 information it obtains through its investigation. The defendant also acknowledges
19 that the Court may rely on this and other additional information as it calculates
20 the Sentencing Guidelines range and makes other sentencing determinations, and
21 the Court's reliance on such information shall not be grounds for the defendant to
22 withdraw his guilty plea.

23 VII. APPLICATION OF SENTENCING STATUTES

24 A. Maximum Penalty. The maximum penalty for conspiracy to commit
25 wire fraud under 18 U.S.C. § 1349 is a 20-year prison sentence, a fine of \$250,000,
26 or both.

1 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors
 2 set forth in 18 U.S.C. § 3553(a) in determining the defendant's sentence. However,
 3 the statutory maximum sentence and any statutory minimum sentence limit the
 4 Court's discretion in determining the defendant's sentence.

5 C. Parole Abolished. The defendant acknowledges that his prison
 6 sentence cannot be shortened by early release on parole because parole has been
 7 abolished.

8 D. Supervised Release. In addition to imprisonment and a fine, the
 9 defendant will be subject to a term of supervised release not greater than ^{five (5)} ~~three (3)~~
 10 years. 18 U.S.C. § 3583(b)(1). Supervised release is a period of time after release
 11 from prison during which the defendant will be subject to various restrictions and
 12 requirements. If the defendant violates any condition of supervised release, the
 13 Court may order the defendant's return to prison for all or part of the term of
 14 supervised release, which could result in the defendant serving a total term of
 15 imprisonment greater than the statutory maximum prison sentence of 20 years.

16 E. Special Assessment. The defendant will pay a \$100 special
 17 assessment at the time of sentencing.

18 VIII. POSITIONS REGARDING SENTENCE

19 The defendant reserves the right to argue for a sentence that is below the
 20 Sentencing Guidelines range (as calculated in this Plea Agreement) pursuant to
 21 the factors set forth in 18 U.S.C. § 3553(a).

22 Further, the United States will recommend that the defendant be sentenced
 23 to the low-end of the applicable Sentencing Guidelines range as determined by the
 24 Court, unless: (a) the defendant commits any act that could result in a loss of the
 25 downward adjustment for acceptance of responsibility; or (b) the defendant argues
 26 for a non-custodial sentence under 18 U.S.C. § 3553(a). In the event the defendant
 27 argues for a non-custodial sentence, the government is bound only to recommend a
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1 sentence within the Sentencing Guidelines range as calculated in this Plea
2 Agreement.

3 Notwithstanding its agreement to recommend a sentence within the
4 applicable range, the United States reserves its right to defend any lawfully
5 imposed sentence on appeal or in any post-conviction litigation. The defendant
6 acknowledges that the Court does not have to follow the government's or the
7 defendant's recommendation as to his sentence.

8 IX. RESTITUTION

9 In exchange for benefits received under this Plea Agreement, the defendant
10 agrees to pay restitution in an amount as determined by the Court, jointly and
11 severally with all co-defendants. The defendant cannot discharge his restitution
12 obligation through bankruptcy proceedings. The defendant acknowledges that
13 restitution payments and obligations cannot offset or reduce the amount of any
14 forfeiture judgment imposed in this case.

15 X. FORFEITURE

16 In consideration of the terms as set forth in this Plea Agreement, the
17 government agrees not to seek forfeiture against the defendant for any offenses
18 arising out of the investigation that led to the instant plea provided all other terms
19 and conditions of this agreement remain in force.

20 XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS

21 Before or after sentencing, upon request by the Court, the United States, or
22 the Probation Office, the defendant will provide accurate and complete financial
23 information, submit sworn statements, and/or give depositions under oath
24 concerning his assets and his ability to pay. The defendant will surrender assets
25 he obtained directly or indirectly as a result of his crimes, and will release funds
26 and property under his control in order to pay any fine or restitution ordered by the
27 Court.

1 **XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

2 A. Plea Agreement and Decision to Plead Guilty. The defendant
3 acknowledges that:

4 1. He has read this Plea Agreement and understands its terms
5 and conditions;

6 2. He has had adequate time to discuss this case, the evidence,
7 and this Plea Agreement with his attorney;

8 3. He has discussed the terms of this Plea Agreement with his
9 attorney;

10 4. The representations contained in this Plea Agreement are true
11 and correct, including the facts set forth in Section IV; and

12 5. He was not under the influence of any alcohol, drug, or
13 medicine that would impair his ability to understand the Agreement when he
14 considered signing this Plea Agreement and when he signed it.

15 The defendant understands that he alone decides whether to plead guilty or
16 go to trial, and acknowledges that he has decided to enter his guilty plea knowing
17 of the charges brought against him, his possible defenses, and the benefits and
18 possible detriments of proceeding to trial. The defendant also acknowledges that
19 he decided to plead guilty voluntarily and that no one coerced or threatened him to
20 enter into this Plea Agreement.

21 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant
22 knowingly and expressly waives: (a) the right to appeal any sentence imposed
23 within or below the applicable Sentencing Guideline range as determined by the
24 Court; (b) the right to appeal the manner in which the Court determined that
25 sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal
26 any other aspect of the conviction or sentence and any order of restitution or
27 forfeiture.

1 The defendant also knowingly and expressly waives all collateral challenges,
2 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the
3 procedure by which the Court adjudicated guilt and imposed sentence, except non-
4 waivable claims of ineffective assistance of counsel.

5 The defendant reserves only the right to appeal any portion of the sentence
6 that is an upward departure from the Sentencing Guidelines range determined by
7 the Court.

8 The defendant acknowledges that the United States is not obligated or
9 required to preserve any evidence obtained in the investigation of this case.

10 C. Removal/Deportation Consequences. The defendant understands and
11 acknowledges that if he is not a United States citizen, then it is highly probable
12 that he will be permanently removed (deported) from the United States as a
13 consequence of pleading guilty under the terms of this Plea Agreement. The
14 defendant has also been advised if his conviction is for an offense described in 8
15 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and
16 will not be allowed to return to the United States at any time in the future. The
17 defendant desires to plead guilty regardless of any immigration consequences that
18 may result from his guilty plea, even if the consequence is automatic removal from
19 the United States with no possibility of returning. The defendant acknowledges
20 that he has specifically discussed these removal/deportation consequences with his
21 attorney.

1 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

2 This Plea Agreement resulted from an arms-length negotiation in which
 3 both parties bargained for and received valuable benefits in exchange for valuable
 4 concessions. It constitutes the entire agreement negotiated and agreed to by the
 5 parties. No promises, agreements or conditions other than those set forth in this
 6 agreement have been made or implied by the defendant, the defendant's attorney,
 7 or the United States, and no additional promises, agreements or conditions shall
 8 have any force or effect unless set forth in writing and signed by all parties or
 9 confirmed on the record before the Court.

10
 11
 12 DANIEL G. BODGEN
 United States Attorney

13 9/4/14
 14 DATE

15 Steven W. Myhre
 First Assistant United States Attorney
 Daniel R. Schiess
 Assistant United States Attorney

16
 17 September 3, 2014
 18 DATE

19 William C. Carrico
 Counsel for Defendant

20 9-3-14
 21 DATE

22 Thomas A. Cecrle, Jr.
 Defendant